

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jane Flanagan	Team: Team # 8	CCRB Case #: 9904267	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 09/17/1999 2:15 PM	Location of Incident: § 87(2)(b)	Precinct: 73	18 Mo. SOL 3/17/2001	EO SOL 3/17/2001	
Date/Time CV Reported Mon, 09/20/1999 9:43 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/20/1999 9:43 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Charles Flynn	00000	887813	073 PCT
2. POF Theresa Abbazia	26336	915210	073 PCT
3. LT Michael Pigott	00000	892561	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Michael McMahon	02892	893365	I.A.B.
2. SGT Robert Mellina	00138	890543	073 PCT
3. SSA Thomas Urban	02799	874830	E S U
4. SSA Joseph Diaz	03415	873544	ESS 06

Officer(s)	Allegation	Investigator Recommendation
A.LT Charles Flynn	Abuse: Lt. Flynn refused to show the search warrant to § 87(2)(b)	§ 87(2)(b)
B.POF Theresa Abbazia	Discourtesy: PO Abbazia spoke rudely to § 87(2)(b)	§ 87(2)(b)
C.LT Michael Pigott	Off. Language: Lt. Pigott made remarks based on ethnicity to § 87(2)(b)	§ 87(2)(b)
D.POF Theresa Abbazia	Force: PO Abbazia used physical force on § 87(2)(b)	§ 87(2)(b)

Synopsis

In this case an ESU team executed narcotics warrants at several locations in one block of East New York. Among the stores searched was a tailor shop run by the two complainants and owned by the complainant's parents, who were witnesses. Officers searched the property, arrested the complainants, and confiscated a blender that they believed contained marijuana residue. The complainants allege that the officers used discourteous language, refused to show them the search warrant, employed excessive force, and caused permanent property damage. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) and her boyfriend, § 87(2)(b) stated that they operate a § 87(2)(b) shop on the ground floor of a building owned by her parents, § 87(2)(b) and § 87(2)(b) (encs. 6A-F, 7A-E) Around 2 PM on the day of the incident, 9/17/99, § 87(2)(b) was the only person in the store. Suddenly, the front door was “boomed” and a squad of police officers in riot gear, carrying shields, entered the store. The officers told § 87(2)(b) to “get the fuck down” on the ground. A female officer, identified as PO Theresa Abbazia, told § 87(2)(b) that they were looking for narcotics activity and that they had a warrant. The officers handcuffed § 87(2)(b) and searched the store.

A few minutes later, § 87(2)(b) arrived at the store. She had heard from a friend that the police were at the location. When § 87(2)(b) arrived, there were about thirty officers around the scene, about ten of them were in riot gear. § 87(2)(b) identified herself, saying that the store was in her name, and was brought into the store where § 87(2)(b) sat handcuffed. § 87(2)(b) asked the officers what they were doing at her store, and when told that they had a warrant, she asked to see it. One of the officers described as a white male with a pointy face like Pee-Wee Herman (later identified as Lt. Flynn) refused to show § 87(2)(b) the warrant. (*Allegation A*) § 87(2)(b) went outside and called “911” to complain that the officers were refusing to show her a warrant.

As § 87(2)(b) was calling “911” her mother, § 87(2)(b) came downstairs to the store and also asked to see the warrant.(enc. 9A – E) No officers responded to this request, however. § 87(2)(b) called “911” to complain about the warrant a second time. Right after this Officer Abbazia arrested her. As she was arresting § 87(2)(b) Officer Abbazia spoke discourteously to § 87(2)(b) saying things like “you better shut the fuck up, you have too much fucking mouth.”(*Allegation B*) While § 87(2)(b) was being brought to the prisoner van a white sergeant with short dark hair, (identified through photo array procedures as Lt. Pigott) spoke offensively to § 87(2)(b) Lt. Pigott said “I should deport you” and “I should send you back to where you’re from.” (*Allegation C*) Then PO Abbazia shoved § 87(2)(b) into the prisoner van in “a forceful manner.” (*Allegation D*) No officer ever showed § 87(2)(b) or § 87(2)(b) the search warrant, either at the precinct or in court.

§ 87(2)(b) and § 87(2)(b) and § 87(2)(b) were shown photo arrays of all the officers on the scene of this incident. (encs. 6A – F, 7A – E, 8A – E, 9A - E) Both

§ 87(2)(b) and § 87(2)(b) positively identified PO Abbazia as the female officer who searched the store and spoke rudely. § 87(2)(b) further identified Lt. Flynn as the officer that refused to show her the search warrant, and Lt. Pigott as the officer who told her to “go back to where she came from.”

Results of Investigation

Various documents were ordered in regards to this complaint. § 87(2)(e), § 87(2)(f)

§ 87(2)(b). The warrant request specifies that the subject location was a § 87(2)(b) shop located on the ground floor of the building. (encs. 18A - B) The updated roll call shows that PO Lanzarone was actually out sick on the day of the incident and that PO Abbazia was acting in her place. (enc. 21A- E) The “UF 49” written by Sgt. Mellina of the 73 precinct, identifies the main officers on the scene at the § 87(2)(b) s shop. (encs. 26A - B)

The E.S.U apprehensions team paperwork reveals that Sgt. Mellina of the 73rd precinct had requested E.S.U assistance executing the warrant. This report attests that there was a “no knock endorsement” on the warrant. The ESU report indicates that marijuana residue and paraphernalia were recovered on the premises, and that PO Abbazia made two arrests. (enc.25A - E)

The copies of the arrest reports show that § 87(2)(b) and § 87(2)(b) were arrested for narcotics recovered on the premises. (encs.22A – B, 23) Among the items vouchered with the arrest were a bag allegedly containing marijuana residue, a scale, some small plastic bags, and a juice man allegedly containing marijuana residue.(enc.20A - B) § 87(2)(b) and § 87(2)(b) pled not guilty and the charges have since been dismissed.

Seven officers were interviewed in regards to this incident. Neither of the ESU personnel interviewed could provide many details of the incident. Sergeant Thomas Urban was the head of the E.S.U apprehension team. He did not remember the incident, but did have a copy of the E.S.U report. (encs. 17A – E, 25A - E) Sergeant Diaz was in charge of the E.S.U entry team. (enc.16A - D) He had executed the warrants at § 87(2)(b) and § 87(2)(b) and believed that he may have gone into the § 87(2)(b) s store at § 87(2)(b). Sergeant Diaz thought his team had only been on the scene for a few minutes. He did recall seeing a male and a female civilian inside the store, but did not recall hearing any discourtesies, offensive language, or witnessing any arrests.

Four of the officers from the 73rd precinct were in the § 87(2)(b) s store on the day of the incident and were interviewed in regard to the complaint. Three officers from the 73rd; PO Abbazia, Sgt. Mellina, and Lt. Pigott all denied that they ever used, or heard another officer use, discourteous or offensive language with § 87(2)(b) encs.11A – D,12A – D,15A – E) Sgt. Mellina and PO Abbazia stated that § 87(2)(b) was shown a copy of the warrant, but neither recalled when § 87(2)(b) was shown the warrant. Lt. Pigott did not recall if § 87(2)(b) ever asked to see a copy of the warrant, but stated that no officer denied her the warrant. Neither Sgt. Mellina nor Lt. Pigott recalled who placed § 87(2)(b) in the van. PO Abbazia denied that she placed § 87(2)(b) in the prisoner van, and did not recall who did put her in the van.

Lt. Flynn of the 73rd precinct did not recall the incident. He stated that he had been across the street working on another warrant and did not remember being in the § 87(2)(b) shop at § 87(2)(b) or interacting with either § 87(2)(b) or § 87(2)(b) encs. 14A - D) However, in his interview,

Sgt. Mellina stated that Lt. Flynn was on the scene at the § 87(2)(b) shop. Sgt. Mellina identified Lt. Flynn as fitting the description of the “Pee Wee Herman looking officer.” (encs. 12A - D)

The only officer interviewed that did not pertain to the 73rd or E.S.U was Sergeant MacMahon from IAB warrant execution.(encs. 13A - D) Sergeant MacMahon had been across the street working on another one of the warrants when he was called across the street to help handle an “unruly female.” The sergeant stated that he did not hear any officers use discourtesies with this woman, and denied that he or any one else used offensive language with her. Sergeant McMahon could not recall if § 87(2)(b) was showed the warrant, or how she was placed in the prisoner van.

Conclusions and Recommendations

§ 87(2)(b), § 87(2)(g)

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Allegation A, abuse – refusal to show warrant, is found in Criminal Procedure law sections §120.90 and §690.50.(enc. Appendix 1A – B) These sections outline that in cases of “no-knock” warrants, the same guidelines apply as with a warrant for arrest. Under these guidelines the officer must show the warrant “upon request if he has it in his possession,” and “as soon after the arrest as possible” if the officer does not have it in his possession. In this case § 87(2)(b) and § 87(2)(b) all stated that although they repeatedly asked to see the warrant, they were never shown it, not even at the precinct or in court. § 87(2)(b) specifically alleged that when she asked to see the warrant, Lt. Flynn stated “We don’t have to show you shit.”

§ 87(2)(g), Lt. Flynn denied that he had been in the § 87(2)(b)'s store on the day of the incident. Lt. Flynn did recall the day of the incident and the operation, however he only remembered executing the search warrant across the street. The report filled out by Sgt. Mellina, as well as the testimonies of Sgt. Mellina, Sgt. McMahon, and Lt. Pigott, all suggest that Lt. Flynn was present at the § 87(2)(b) shop. § 87(2)(b), § 87(2)(g)

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§ 87(2)(b) stated in her original CCRB interview, and in the photo array procedure, that PO Abbazia spoke very rudely to her and used discourtesies throughout the incident. Her father, § 87(2)(b) had corroborated this allegation in his original statement. § 87(2)(b) also corroborated this allegation when he identified PO Abbazia in the photo-array procedure, saying that she was the officer who was being “rude” and “nasty.” However, all of the officers interviewed denied that they heard any officer using discourteous language and PO Abbazia denied using it. § 87(2)(g)

Allegation C was also made by § 87(2)(b). She alleges that after she was arrested, and before she was placed in the prisoner van, a dark haired officer in a white shirt spoke offensively to her, saying “you should go back to where you come from.” When looking at photo arrays § 87(2)(b) identified this officer as Lt. Pigott and stated again that he was the man who told her to “go back to where you come from.” All of the other officers interviewed denied that they ever heard any officer make this statement, and there were no civilian witnesses. § 87(2)(b), § 87(2)(g)

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Investigator:

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